



(Billing Code: 3510-DS-P)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-815]

Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a request from Noksel Celik Boru Sanayi A.S., (Noksel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey. Atlas Tube, Inc. and Searing Industries, Inc., are petitioners in this case. The review covers exports of the subject merchandise to the United States produced and exported by Noksel. The period of review (POR) is May 1, 2010, through April 30, 2011.

We preliminarily find that Noksel did not make sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we shall instruct U.S. Customs and Border Protection (CBP) to liquidate Noksel's entries subject to this administrative review without regard to antidumping duties and to set the cash deposit rate for Noksel to zero.

EFFECTIVE DATE: [Insert date of publication in Federal Register.]

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S.

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#### SUPPLEMENTARY INFORMATION:

##### Background

The Department published the antidumping duty order on light-walled rectangular pipe and tube from Turkey on May 30, 2008.<sup>1</sup> On May 2, 2011, the Department published the notice of opportunity to request an administrative review of light-walled rectangular pipe and tube from Turkey for the period January 30, 2010, through April 30, 2011.<sup>2</sup> On May 27, 2011, Noksel requested an administrative review for this period. On June 28, 2011, the Department published in the Federal Register a notice of initiation of this antidumping duty administrative review. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 37781 (June 28, 2011). On August 5, 2011, the Department issued its antidumping questionnaire to Noksel.

Noksel submitted its response to section A of the Department's antidumping questionnaire on September 26, 2011 (Noksel's section A Response). Noksel submitted its response to sections B and C of the Department's antidumping questionnaire on October 13, 2011 (Noksel's sections B and C Responses).

On January 12, 2012, the Department issued a supplemental questionnaire to Noksel regarding Noksel's section A Response and Noksel's sections B and C Responses. Noksel submitted its response to the Department's supplemental questionnaire on February 15, 2012

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<sup>1</sup> See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube from Turkey, 73 FR 31065 (May 30, 2008).

<sup>2</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 76 FR 24460 (May 2, 2011).

(Noksel's Supplemental Response).

### Scope of the Order

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope.

The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

### Limited Home Market Reporting

In accordance with the contemporaneity rules as described in section B of the Department's questionnaire and 19 CFR 351.414(e)(2), Noksel requested that the reporting period for home market sales be limited to the period September 1, 2010, through April 30, 2011. Noksel reported U.S. sales which were invoiced in only one calendar month of the POR. See

Noksel's September 30, 2011, letter; see also Noksel's Supplemental Response at Exhibit 1.

Noksel reported that it had no other U.S. sales during the POR. Id. The Department's contemporaneity rules (as described in section B of the questionnaire and 19 CFR 351.414(e)(2)) limit the matching of any particular U.S. sale to the nearest matching comparison market sale in the three months previous -- or the two months subsequent -- to the month containing the date of sale of that U.S. sale. Hence, for each U.S. sale, there is a six-month "window" for the purposes of matching to a comparison market sale.<sup>3</sup> (For further explanation of our determination of date of sale in both markets, see the "Fair Value Comparisons" section below.)

Our past practice in cases in which respondents made sales of subject merchandise in only a portion of the POR has been to allow respondents, when requested properly and in a timely manner, to limit their home market sales reporting period to those home market sales which are contemporaneous with their U.S. sales.<sup>4</sup> Therefore, to ensure that we would have the

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<sup>3</sup> Noksel submitted its request to shorten the reporting period at a point in the administrative review when there was doubt as to what date the Department would use for date of sale with regard to U.S. sales. Noksel summed the possibilities as: "The date of sale for Noksel's earliest U.S. sale is either in December 2010 (if the Department considers the date of contract as the date of sale) or in January 2011 (if the Department considers the date of invoice to be the date of sale). The date of sale for Noksel's latest U.S. sale is either in December 2010 (if the Department considers the date of contract as the date of sale) or in February 2011 (if the Department considers the date of invoice to be the date of sale)." See Noksel's September 30, 2011, letter. We agree. In our margin calculations, U.S. sales made in December 2010 could potentially be compared to the prices of home market sales at any time between September 1, 2010, and February 28, 2011; U.S. sales made in February 2011 could potentially be compared to the prices of home market sales made between November 1, 2010, and April 30, 2011. U.S. sales made in December 2010, January 2011, or February 2011 could not match to home market sales made in any months outside of the period of September 1, 2010, to April 30, 2011.

<sup>4</sup> See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 1818 (January 12, 2006) (unchanged in Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review, 71 FR 40694 (July 18, 2008)); Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17406 (April 6, 2005) (unchanged in Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil, 70 FR 58683 (October 7, 2005); and Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review, 75 FR 61127 (October 4, 2010); see also Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 57953

necessary home market sales, regardless of our choice of date of sale, we allowed Noksel to limit its reporting of home market sales to those sales made during the period September 1, 2010, through April 30, 2011. Our analysis indicated that, based on the totality of the record evidence, the appropriate dates of sale of Noksel's U.S. sales are in December 2010. (For further explanation of our determination of date of sale in both markets, see the "Fair Value Comparisons" section below.)

Noksel also reported that it made sales of certain "second quality" merchandise for which Noksel claimed it lacked complete sales records. See Noksel's section B Response at page B-4 and at Exhibit B-4; see also Noksel's Supplemental Response at pages S-16 to S-18. Noksel further explained that it could not differentiate the sales of these products according to product type (i.e., cannot generate a control number to permit matching to U.S. sales). Noksel did not report these sales in its sales home market database, but did report all the information it maintained about these sales. See Noksel's section B Response at Exhibit B-4. Based on the information on the record, we preliminarily determine that these are sales of "second quality" merchandise that would not be suitable for matching to the prime quality pipe Noksel sold in the United States.

#### Fair Value Comparisons

In calculating the preliminary weighted-average dumping margin for the mandatory respondent, the Department applied the calculation methodology adopted in the Final Modification for Reviews.<sup>5</sup> In particular, the Department compared monthly weighted-average

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(September 19, 2011) (the previous administrative review of Noksel, in which the same issue was presented).

<sup>5</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in

export prices (EPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to consider, pursuant to 19 CFR 351.414(c), whether another method is appropriate in these administrative reviews in light of any comments on the issue that parties may include in their case and rebuttal briefs.

To determine whether sales of light-walled rectangular pipe and tube from Turkey in the United States were made at less than NV, we compared U.S. price to NV, as described in the "Export Price" and "Normal Value" sections of this notice. Because we determined Noksel made only EP sales during the POR, we used EP as the basis for U.S. price in all of our comparisons.

In accordance with 19 CFR 351.410(i), the Department "normally" will use invoice date as the date of sale unless "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." Based on evidence on the record, we preliminarily determine that the material terms of sale for U.S. sales were established at the time of the issuance of the purchase order/contract. Noksel explained that base price and discount rate can vary between the purchase order date and the invoice date in the home market. See Noksel's section A Response at page A-22 to A-24; see also Noksel's Supplemental response at pages S-7 to S-9. However, in the case of Noksel's U.S. sales, no such variance occurred; neither quantity nor unit price varied between purchase order and invoice. See Noksel's section A Response at

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Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").

page A-22. We preliminarily determine that Noksel's use of the contract/purchase order date as the date of sale for its U.S. sales better reflects the date on which the exporter or producer established the material terms of sale than the invoice date during this POR.

Based on the same record evidence, we preliminarily determine that the material terms of sale for home market sales were not established at the time of the purchase order. See Noksel's section A Response at page A-22 to A-24; see also Noksel's Supplemental response at pages S-7 to S-9. Therefore, we preliminarily determine that Noksel's use of the earlier of the invoice date or the shipping date better reflects the date on which the exporter or producer established the material terms of sale than the contract/purchase order date during this POR.<sup>6</sup>

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Noksel covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As mentioned above, we limited the reporting period for home market sales to the period of September 1, 2010, through April 30, 2011. We relied on six characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): 1) steel input type; 2) metallic coating; 3) painted/non-painted; 4) perimeter; 5) wall thickness; and 6) shape. See the antidumping questionnaire at Appendix 5. In our normal practice where there are no contemporaneous sales of identical merchandise in the home market to compare to U.S. sales, we compare U.S. sales to

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<sup>6</sup> See Memorandum from Mark Flessner to the File entitled, "Light-Walled Rectangular Pipe and Tube from Turkey: Preliminary Results Analysis Memorandum for Noksel Celik Boru Sanayi A.S. (Noksel)," dated May 30, 2012 (Preliminary Analysis Memorandum) at page 2.

contemporaneous sales of the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. See Preliminary Analysis Memorandum at page 2. For these preliminary results, we compared U.S. sales to identical foreign like products. In our normal practice, where there are no sales of identical or similar merchandise in the home market suitable for comparison to U.S. sales, we compare U.S. sales to constructed value (CV). For these preliminary results, because there were sales of identical merchandise in the home market suitable for comparison to each U.S. sale, we compared no U.S. sales to CV in these preliminary results.

#### Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c). In accordance with section 772(a) of the Act, we used EP for all of Noksel’s U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and were made directly to unaffiliated U.S. customers, and because our constructed export price (CEP) methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for duty drawback. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and exporter’s association fee. See Preliminary Analysis Memorandum at pages 3-4. Additionally, we made adjustments for



differences in circumstances of sale (COS) for home market and U.S. credit and banking expenses in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. Id.

Noksel requested a duty drawback adjustment. See Noksel's section C Response at page C-33. Section 772(c)(1)(B) of the Act states: "The price used to establish export price and constructed export price shall be increased by... the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." Based upon this statutory language, the Department applies a two-prong test to determine entitlement to a duty drawback adjustment. That is, the party claiming such adjustment must establish that: (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. See Duty Drawback Practice in Antidumping Proceedings, 70 FR 37764 (June 30, 2005).

Noksel reported that it collects rebates of import duties for purchases of raw materials, based upon its exports of merchandise manufactured from those raw materials, under the Turkish Inward Processing Regime (IPR). See Noksel's section C Response at pages C-33 to C-34. However, despite being requested to do so, Noksel did not segregate subject merchandise from non-subject merchandise. See Noksel's Supplemental Response at page S-36. Noksel calculates its duty drawback claim by dividing the total amount of duties paid on imported coil by the total amount of exports of finished products made from those imported coils. See Noksel's section C

Response at C-34 and at Exhibit C-12. We draw no adverse inference; but because this duty drawback claim is value-based, and no segregation between subject and non-subject merchandise is made, it is not possible for the Department to evaluate whether the amount claimed is appropriate. Specifically, we cannot evaluate whether the import duty paid on the reported raw materials and the rebate payment due with regard to the subject merchandise sold during this POR are directly linked to, and dependent upon, one another. Therefore, in accordance with section 772(c)(1)(B) of the Act, we have not made an adjustment to U.S. price for duty drawback. See Preliminary Analysis Memorandum at pages 7-8.

#### Normal Value

##### A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Noksel's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Noksel's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales.

##### B. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Noksel had sales to an affiliate in the home market who did not resell the Noksel material as subject merchandise, but rather incorporated it into its own products. See Noksel's section A Response at page A-11.

Noksel did not contend that these sales were at arm's length. See Noksel's Supplemental Response at page S-3. We therefore disregarded these sales. See Preliminary Analysis Memorandum at page 4. We made adjustments for billing adjustments, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (i.e., DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We also made adjustments for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses and banking charges. See Preliminary Analysis Memorandum at pages 5 and 8. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of

consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.<sup>7</sup>

Noksel reported that it sold light-walled rectangular pipe and tube at only one level of trade and in only one channel of distribution in the home market and at one level of trade and in one channel of distribution in the U.S. market. See Noksel's section A Response at pages A-17 to A-21; see also Noksel's Supplemental Response at pages S-3 to S-5 and Exhibit SA-2. Based on our analysis of the record evidence provided by Noksel, we preliminarily determine that a single LOT exists in the home market. We obtained information from Noksel regarding the marketing stages involved in making its reported home market and U.S. sales. Noksel described all selling activities performed, and provided a table comparing the selling functions performed in both markets. Id. We find Noksel performed virtually the same level of customer support services on its EP sales as it did on its home market sales and that the minor differences that do exist do not establish a distinct and separate level of trade. Consequently, the record evidence supports a finding that, in both markets, Noksel performs essentially the same level of services. While we found minor differences between the home and U.S. markets (based on our analysis of the selling functions performed on EP sales in the United States and its sales in the home market), we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. See Noksel's Supplemental Response at pages

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<sup>7</sup> See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

S-4 to S-5 and Exhibit SA-2. For this reason, we preliminarily find that a LOT adjustment is not appropriate for Noksel. As there are no CEP sales, no CEP offset is appropriate.

#### Currency Conversions

In accordance with section 773A(a) of the Act, we made Turkish lira-U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the dates of the U.S. sales, as collected by Dow Jones Reuters Business Interactive LLC (marketed as Factiva) and as published on the Import Administration's web site (<http://ia.ita.doc.gov/exchange/index.html>).

#### Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period May 1, 2010, through April 30, 2011:

<u>Manufacturer / Exporter</u>	<u>Weighted Average Dumping Margin</u>
Noksel	0.00 percent

#### Disclosure and Public Hearing

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within thirty days of publication. See section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to section 351.310(d) of the Department's regulations. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues

raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

### Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. Noksel has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of dumping calculated for the

examined sales to the total entered value of the examined sales of that importer. If Noksel's weighted-average dumping margin remains zero (or below de minimis) for the final results of this administrative review, we shall direct CBP to liquidate entries subject to this administrative review without regard to antidumping duties. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

The Department clarified its "automatic assessment" regulation on May 6, 2003. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction. Id.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of light-walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for Noksel will be the rate established in the final results of review; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established

for the most recent period for the manufacturer of the merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 27.04 percent ad valorem from the LTFV investigation. See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube From Turkey, 73 FR 31065 (May 30, 2008). These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double the antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

May 30, 2012 \_\_\_\_\_  
Date

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